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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/753,130	01/07/2004	Matthias Sunder	H 5339 PCT/US	4434
423	7590	08/11/2004		EXAMINER
HENKEL CORPORATION THE TRIAD, SUITE 200 2200 RENAISSANCE BLVD. GULPH MILLS, PA 19406				MRUK, BRIAN P
			ART UNIT	PAPER NUMBER
			1751	

DATE MAILED: 08/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/753,130	SUNDER ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Brian P Mruk	1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 05 May 2004.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-61 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-61 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>5-5-04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

***Claim Objections***

2. Claims 1-61 are objected to because of the following informalities:

In instant claim 1, the number "iv" should be amended to --iii)—for consistency purposes.

Instant claims 2-61 are objected to for being dependent upon claim 1.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 7-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. The examiner notes that the structural units of formulae (III)-(VIII) in instant claim 7 are not satisfied. Specifically, the center carbon in the units "CH<sub>2</sub>-CH-C(O)" and "CH<sub>2</sub>-

CCH<sub>3</sub>-C(O)" only contains 3 bonds for the carbon atom, which renders the claim vague and indefinite. Appropriate correction and/or clarification is required.

6. The examiner notes that instant claim 7 recites "formula V", but notes that there is no structure for formula (V). This renders the claim vague and indefinite, since it is unclear if there is a formula (V) that is included in the Markush group. Appropriate correction and/or clarification is required.

7. The variable "n=0" in instant claim 8 renders the claim vague and indefinite, since claim 7, from which claim 8 depends from, requires the spacer group "Y" to contain at least one carbon atom. Appropriate correction and/or clarification is required.

8. Claims 9-12 recite the limitation "sulfonated copolymers" in lines 2-3 of each claim. There is insufficient antecedent basis for this limitation in the claim. The examiner suggests that the term "sulfonated" should be removed from each of claims 9-12 to provide proper antecedent basis. Appropriate correction and/or clarification is required.

#### ***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-26 and 28-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Zhou et al, EP 851,022.

Zhou et al, EP 851,022, discloses a rinse aid composition comprising a scale inhibiting copolymer that contains carboxylic acid, sulfonated, and nonionic monomers (see page 3, lines 23-31), 1-40% by weight, preferably 5-20% by weight, of a surfactant system, including nonionic surfactants (see page 4, lines 39-45), 1-60% by weight of a builder system, including citrate, copolymeric polycarboxylic acid, and phosphate based builders (see page 8, line 45-page 9, line 42), sequestrants (see page 9, lines 45-58), optionally, 1-30% by weight of a solvent, such as propylene glycol (see page 10, lines 34-54), and other adjunct ingredients, including enzymes and thickeners (see Examples 1-4), per the requirements of the instant invention. It is further taught by Zhou et al that the pH of the composition is less than or equal to 7 (see page 4, lines 27-35), and that the composition is used in a machine dishwasher (see page 11, lines 5-20). Although Zhou et al is silent with respect to the viscosity of the rinse aid composition, the examiner asserts that the rinse aid compositions disclosed in Zhou et al would inherently meet the viscosity requirements of instant claims 33-35, since Zhou et al teaches similar compositions containing the required components in the amounts required in the instant claims, absent a showing otherwise. Therefore, instant claims 1-26 and 28-36 are anticipated by Zhou et al, EP 851,022.

***Double Patenting***

11. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

12. Claims 1-61 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-75 of copending Application No. 10/752,947. Although the conflicting claims are not identical, they are not patentably distinct from each other because copending Application No. 10/752,947 claims a similar dishwashing composition comprising 20-50% by weight of a phosphate builder, 0.1-70% by weight of a copolymer of a carboxylic acid and a monomer containing sulfonic acid groups, 7.5-30% by weight of a nonionic surfactant, a polyacrylic acid thickener, nonaqueous solvents, chelants, enzymes, redox-active substances, and adjunct ingredients (see claims 1-60 of copending Application No. 10/752,947), as required by applicant in the instant invention. It is further claimed by copending Application No. 10/752,947 that the dishwashing composition is contained in a water-soluble enclosure, such as polyvinyl alcohol (see claims 61-75 of copending

Application No. 10/752,947). Therefore, instant claims 1-61 are an obvious formulation in view of claims 1-75 of copending Application No. 10/752,947.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Mruk whose telephone number is (571) 272-1321. The examiner can normally be reached on Monday-Thursday from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

*BPM*  
Brian Mruk  
August 5, 2004

*Brian P. Mruk*  
Brian P. Mruk  
Primary Examiner  
Tech Center 1700